

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Luis Santana-Reyes,)	Civil Action No.: 6:17-cv-02904-JMC
)	
Petitioner,)	
)	
v.)	
)	ORDER
Warden Bonita Mosley,)	
)	
Respondent.)	
_____)	

This matter is before the court upon review of the Magistrate Judge’s Report and Recommendation (“Report”) (ECF No. 11), filed on November 29, 2017, recommending that the Petitioner’s Petition (ECF No. 1) be dismissed without requiring Respondent to file a return, because Petitioner has “failed to state a cognizable constitutional due process claim.” (ECF No. 11 at 4.)

The Magistrate Judge’s Report is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, which has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made. Fed. R. Civ. P. 72(b)(2)-(3).

The parties were advised of their right to file objections to the Report. (ECF No. 11 at 5.) However, neither party filed any objections to the Report.

In the absence of objections to the Magistrate Judge’s Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, “in the absence of a timely filed objection, a district court need not conduct

a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (*quoting* Fed. R. Civ. P. 72 advisory committee’s note). Furthermore, failure to file specific written objections to the Report results in a party’s waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *see Wells v. Shriners Hosp.*, 109 F.3d 198, 200 (4th Cir. 1997) (“[t]he Supreme Court has authorized the waiver rule that we enforce. . . . ‘[A] court of appeals may adopt a rule conditioning appeal, when taken from a district court judgment that adopts a magistrate’s recommendation, upon the filing of objections with the district court identifying those issues on which further review is desired.’”) (citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)).

After a thorough review of the Report and the record in this case, the court finds the Report provides an accurate summary of the facts and law. Petitioner’s claim that his due process rights were violated during his disciplinary hearing, “do[es] not seem to rise to the level of a due process right protected under *Wolff* [*v. McDonnell*, 418 U.S. 539, 560-561 (1974)].”.¹ (ECF No. 11 at 4.) Therefore, the court **ACCEPTS** the Magistrate Judge’s Report and Recommendation (ECF No. 11) **DISMISSING** Petitioner’s Petition (ECF No. 1). Respondent is not required to file a return.

CERTIFICATE OF APPEALABILITY

The law governing certificates of appealability provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

¹ Petitioner does not state what punishment he received for this infraction thus the court is not able to ascertain whether or not he lost any good time credits, which may affect the level of due process afforded to Petitioner. *See Wolff*, 418 U.S. at 560. (*See also* ECF No. 11 at 3 n.1.)

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable judges would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See, e.g., Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

December 28, 2017
Columbia, South Carolina